IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

JAMES MAZE — PLAINTIFF

vs. — Civil Action No. 4:94cv211-D-A

EDWARD HARGETT, et al. — DEFENDANTS

MEMORANDUM OPINION

Upon consideration of the file and record in this action, the court is of the opinion that the Magistrate Judge's Report and Recommendation dated February 29, 1996, should in large part be adopted and approved as the opinion of this court. Having conducted an independent, *de novo* review of the record including the transcript of the hearing, plaintiff's and defendants' objections and applicable case law, the court is of the opinion that the Magistrate Judge correctly assessed the facts and the law in reaching her conclusions.

In this cause, the plaintiff charges that the defendants have failed to afford him with adequate outdoor recreation. Further, he charges that while he is entitled[1] to receive five (5) hours per week outside of his cell, the defendants require him to divide that time between taking a shower, using the law library or taking yard call. After presiding over a non-jury trial, the Magistrate Judge determined that the plaintiff was allowed outdoor exercise a total of twelve (12) days in 1993 and twenty (20) days in 1995.[2] Maze v. Hargett, et al., Cause No. 4:94cv211-D-A (N.D. Miss. Feb. 29, 1996) (Alexander, M.J.) (Report and Recommendation at 7). The defendants

did not offer any evidence in rebuttal to the plaintiff's testimony, witnesses and exhibits proving the extent of the plaintiff's outdoor recreation. The court has reviewed the transcript of the non-jury trial and agrees with the findings of the Magistrate Judge concerning the extent of the days allotted the plaintiff for outside recreation during 1993 and 1995. The court also agrees with the finding that the

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[1] MDOC Policy and Procedure No. 08.06.3.

[2] The plaintiff was not allowed to introduce the MDOC records of outdoor recreation for 1994 furnished him because he had written notes on them.

plaintiff is allowed outside his cell for at least one hour five days a week and that the plaintiff's complaint apparently is not premised on the time allowed outside his cell, but on the actual time allowed outdoors.[3]

The Magistrate Judge held that the plaintiff had proved a sufficient denial of opportunity for exercise so as to constitute a violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The Magistrate Judge recommended awarding the plaintiff injunctive relief along with damages. The defendants have objected on the asserted grounds that (1) the facts do not support such a finding, (2) there is no absolute constitutional right to outdoor exercise, (3) the plaintiff failed to demonstrate the deprivation of a basic human need, and (4) the evidence does not show deliberate indifference on the part of the defendants.

LEGAL DISCUSSION

I. Eighth Amendment

. Generally

The defendants are correct in asserting that neither the Supreme Court nor the Fifth Circuit Court of Appeals has ever specifically held that inmates enjoy an absolute right of outdoor recreation or exercise. Green v. Ferrell, 801 F.2d 765, 771-72 (5th Cir. 1986); Ruiz v. Estelle, 679 F.2d 1115, 1152 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). The Fifth Circuit has held, however, that an extended deprivation of exercise opportunities, whether outdoors or indoors, *might* impinge upon an inmate's Eighth Amendment rights depending upon the particular facts of a given case. Green, 801 F.2d at 771-72; Ruiz, 679 F.2d at 1152; Montana v. Commissioners Court, 659 F.2d 19, 22 (5th Cir. Unit A 1981); McGruder v. Phelps, 608 F.2d 1023, 1025 (5th Cir. 1979) (""[C]onfinement to a cell for twenty-three and one-half hours per day for periods of months and absence of outdoor exercise . . . may make out an eighth amendment violation."). Indeed, the federal courts, including the United States Supreme

[3]Having reviewed the transcript, the court concludes that the Report and Recommendation should be adopted insofar as entering judgment on the defendants' behalf against the plaintiff's claim of having to choose between taking a shower and outside exercise. The court also adopts the recommendation of the Magistrate Judge to enter judgment on behalf of defendant J. Stewart Murphy against all the plaintiff's claims.

Court, have repeatedly recognized that exercise is a basic human need protected by the Eighth Amendment. See, e.g., Wilson v. Seiter, 501 U.S. 294, 298, 111 S.Ct. 2321, 2327, 115 L.Ed.2d 271 (1991) (noting Eighth Amendment violated when conditions of confinement result in "deprivation of a single, identifiable human need such as food, warmth, *or exercise* . . . ") (emphasis added); Williams v. Greifinger, 97 F.3d 699, 704 (2nd Cir. 1996) ("[In 1985,] we described the right to exercise in unequivocal terms, stating '[c]ourts have recognized that some opportunity for exercise must be afforded to prisoners.'"); Allen v. Sakai, 48 F.3d 1082, 1088 (9th Cir.1994) (stating that a long-term deprivation of exercise is a denial of a basic human need in violation of the Eighth Amendment). The Fifth Circuit acknowledges that "[i]nmates require regular exercise to maintain reasonably good physical and psychological health." Ruiz v. Estelle, 679 F.2d 1115, 1152 (5th Cir.1982) (citing Campbell v. Cauthron, 623 F.2d 503, 506-07 (8th Cir.1980); Spain v. Procunier, 600 F.2d 189, 199 (9th Cir.1979)). What is required of prison officials at a minimum is not that they provide inmates with time outdoors, but rather that they provide an adequate opportunity for exercise - indoors or out. In determining whether an inmate is being afforded an adequate opportunity to exercise, the court must generally consider 1) the size of the inmate's cell; 2) the amount of time the inmate spends locked in his cell each day, and 3) the overall duration of his confinement. Green v. Ferrell, 801 F. 2d 765, 771 (5th Cir. 1986); Ruiz, 679 F. 2d at 1152. Ultimately, the court must consider the specific circumstances of a health hazard on a case by case basis. Green, 801 F. 2d at 771; Ruiz, 679 F.2d at 1152; Lato v. Attorney General, 773 F. Supp. 973, 978 (S.D. Tex. 1991).

Nevertheless, the mere showing by a plaintiff of a lack of adequate exercise opportunities does not alone constitute a violation of the Eighth Amendment which is recoverable under § 1983. Only deliberate indifference to a substantial risk of serious harm to an inmate constitutes actionable cruel and unusual punishment as prohibited by the Eighth Amendment to the United States Constitution. Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994); Helling v. McKinney, 509 U.S. 25, 113 S.Ct. 2475, 125 L.Ed.2d 22 (1993); Wilson, 501 U.S. at 294, 111 S.Ct. at 2322. A prison official violates the Eighth Amendment only when two requirements are met. First, the deprivation alleged

must be sufficiently serious when viewed objectively. Hudson v. McMillan, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992). Second, the prison official must have a sufficiently culpable state of mind. Farmer, 511 U.S. at ----, 114 S.Ct. at 1979; Wilson, 501 U.S. at 297, 111 S.Ct. at 2323.

In prison conditions cases, the state of mind is one of deliberate indifference to inmate health or safety. "Deliberate indifference" had been an amorphous term for many years until the Supreme Court acknowledged it had "never paused to explain the meaning of the term" and decided Farmer v. Brennan in 1994. Farmer, 511 U.S. at ----, 114 S.Ct. at 1978. Deliberate indifference thereafter is comprised of both an objective and subjective component, which includes actual knowledge of a known risk. The Supreme Court compared it to the standard for "criminal recklessness." Id. 511 U.S. at ----, 114 S.Ct. at 1979. Hence, a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health and safety; the official must both be aware of facts from which the inference could be drawn that substantial risk of serious harm exists and he must also draw the inference. Id.

. Violation of the Eighth Amendment

One argument made by the defendants in objection to the Report and Recommendation of the Magistrate Judge is that the plaintiff has failed to show that he has suffered a significantly serious deprivation, *i.e.*, that he has failed to show that he has suffered a significant or serious injury as a result of the alleged deprivation. Contrary to the defendant's contention, such a showing is not required.

> There is no concise definition of what types of prison conditions pose a "substantial risk of serious harm" under the Eighth Amendment. Instead, we examine this component of the test "contextually," making sure to be responsive to "contemporary standards of decency." We must consider "whether society considers the risk . . . to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk." We also must consider that the Eighth Amendment is intended to protect against both present and future dangers to inmates. Prison authorities must protect not only against current threats, but also must guard against "sufficiently imminent dangers" that are likely to cause harm in the "next week or month or year."

Hudson v. McMillian, 503 U.S. 1, 8, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992); see also Farmer v. Brennan, 511 U.S. 825, ----, 114 S.Ct. 1970, 1976, 128 L.Ed.2d 811, 822 (1994); Helling v. McKinney,

509 U.S. 25, 33, 113 S.Ct. 2475, 2480, 125 L.Ed.2d 22 (1993) (observing that prisoners may obtain relief "even though it was not alleged that the likely harm would occur immediately and even though the possible [harm] might not affect all of those [at risk]") (discussing Hutto v. Finney, 437 U.S. 678, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978)). It is not necessary that the plaintiff demonstrate at this juncture that he has already suffered a grave injury because of the defendants' failure to provide him with adequate exercise. Rankin v. Klevenhagen, 5 F.3d 103, 107 (5th Cir. ("Hudson removed the 'serious' or 'significant' injury requirement we previously held necessary to show an Eighth Amendment violation. 'The absence of serious injury is therefore relevant to the Eighth Amendment inquiry, but does not end it.'") (citing Hudson, 503 U.S. at ----, 112 S.Ct. at 999). It is sufficient that the plaintiff, if subjected to the lack of exercise for the remainder of his sentence, faces a sufficiently imminent danger of significant harm during the tenure of that sentence. The court does find relevant the absence of any serious or significant injury by the plaintiff in this case. When looking at the facts of this case, however, the undersigned comes to the conclusion that virtually[4] the only exercise opportunity outside of Mr. Maze's cell lies in a smoke-filled, crowded dayroom whose dimensions lie somewhere between 16' x 20' and 20' x 30'.[5] Based upon this fact, the court has little problem determining that such conditions imposed upon the plaintiff, in light of his sentence of one hundred and twenty (120) years and the amount of time spent in his cell daily (approximately 23 hours), subjects Mr. Maze to a sufficiently imminent danger of future physical harm from lack of exercise. While there does not appear to be any evidence before

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[4] The proof presented before the Magistrate Judge was that Mr. Maze has been permitted time outdoors, for one hour periods:

) twelve days during the calendar year 1993; and
) twenty days during the calendar year 1995 (fourteen of which occurred after the Magistrate Judge set this matter down for trial).

Report and Recommendation, p. 7. While the plaintiff has been permitted some time outdoors, the vast amount of Mr. Maze's "yard" time has been spent in the dayroom.

[5] The unrebutted testimony before the Magistrate Judge was the dayroom in which the plaintiff is permitted his one hour per day "yard call" is usually populated with anywhere from twelve to fourteen people at any given time. Assuming that 1) the dayroom is in fact 20' x 30' (the largest size supported by evidence in the record), and that 2) the dayroom is always populated by at least twelve people (the smallest number supported by the evidence) when Mr. Maze is given his daily hour there ,then each person in the dayroom would have the approximate equivalent of a 5' x 10' area in which to "exercise." This presupposes, of course, that due respect is given for everyone's "personal space," which would seem unlikely in a prison setting. While the undersigned realizes that the characterization of the plaintiff having only a 5' x 10' space in which to exercise is not precise, it merely illustrates the crowded nature of the dayroom.

the court regarding the size of the plaintiff's cell, the undersigned does not find that the lack of this information requires a different result.

. Liability for the Violation - Deliberate Indifference by the Defendants

. Liability

This court has determined that the Magistrate Judge correctly determined that the conditions of Mr. Maze's confinement deprive him of an adequate opportunity to exercise. As already noted, however, in order to find the defendants liable under § 1983 for any Eighth Amendment deprivation, the plaintiff must demonstrate that the defendants actually knew of the excessive risk of harm to the plaintiff and responded to that risk of harm with deliberate indifference.

The Magistrate Judge concluded that based upon the evidence presented before her, sufficient evidence exists in the record to find that the defendants Hargett, Cook, Jones and Armstrong should be held liable to the plaintiff for violating Mr. Maze's Eighth Amendment rights. Report and Recommendation, pp. 14-16. In their objections to the Report and Recommendation, the defendants argue that the Magistrate Judge has failed to properly apply the subjective nature of the Eighth Amendment analysis. The court, in reviewing the evidence, finds that the Magistrate Judge correctly reached the conclusion that each of these defendants knew of a substantial risk of serious harm to the plaintiff from a lack of adequate exercise opportunities and responded to that risk of harm with deliberate indifference.

> Whether a prison official had the requisite knowledge of a substantial risk is a question of fact *subject to demonstration in the usual ways*, including inference from circumstantial evidence, cf. Hall 118 (cautioning against "confusing a mental state with the proof of its existence"), and a factfinder may conclude that a prison official knew of a substantial risk *from the very fact that the risk was obvious*.

Farmer, 128 L.Ed.2d at 828 (emphasis added). The defendants' remaining arguments in this regard (*e.g.*, the plaintiff's Eighth Amendment rights in the context of this case were not "clearly established") are only relevant to the issue of whether they are entitled to the protection of qualified immunity.

II. Qualified Immunity

The defendants Hargett, Cook, Jones and Armstrong also argue that the Magistrate Judge erred

in not awarding them qualified immunity against the plaintiff's claims. Initially, the court notes that even if these defendants are entitled to the protection of qualified immunity, it will only serve as a shield against an award of monetary damages and will not prevent the imposition of injunctive relief against them. See, e.g., Mangaroo v. Nelson, 864 F.2d 1202, 1208 (5th Cir.1989). Likewise, the protection of the Eleventh Amendment will not prevent the imposition of injunctive relief against the defendants in their official capacity. Kentucky v. Graham, 473 U.S. 159, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985); Wallace v. Texas Tech. Univ., 80 F.3d 1042 (5th Cir.1996); Leland v. Mississippi St. Bd. of Registration, 841 F. Supp. 192, 196 (S.D. Miss.1993).

Public officials are entitled to assert the defense of qualified immunity in a § 1983 suit for discretionary acts occurring in the course of their official duties. Harlow v. Fitzgerald, 457 U.S. 800, 806, 102 S.Ct. 2727, 73 L.Ed.2d 396, 403 (1982); Gagne v. City of Galveston, 805 F.2d 558, 559 (5th Cir.1986); Jacquez v. Procunier, 801 F.2d 789, 791 (5th Cir.1986). Public officials are shielded from liability for civil damages as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Davis v. Scherer, 468 U.S. 183, 194, 104 S.Ct. 3012, 3019, 82 L.Ed.2d 139 (1984); Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982); White v. Walker, 950 F.2d 972, 975 (5th Cir.1991); Morales v. Haynes, 890 F.2d 708, 710 (5th Cir.1989). Stated differently, qualified immunity provides "ample protection to all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092, 1096, 89 L.Ed.2d 271 (1986). The first step in the inquiry of the defendants' claim of qualified immunity is whether the plaintiff has alleged the violation of a clearly established right. Siegert v. Gilley, 500 U.S. 266, 111 S.Ct. 1789, 114 L.Ed.2d 277, 287 (1991). This inquiry necessarily leads the court to the second step of the inquiry, which questions whether or not the officer acted reasonably under settled law in the circumstances with which he was confronted. Hunter v. Bryant, 502 U.S. 224, 112 S.Ct. 534, 116 L.Ed.2d 589, 596 (1991); Lampkin v. City of Nacogdoches, 7 F.3d 430 (5th Cir.1993). "If reasonable public officials could differ on the lawfulness of the defendant's actions, the defendant is entitled to qualified immunity." Blackwell v. Barton, 34 F.3d 298,

303 (5th Cir.1994) (quoting Pfannstiel v. Marion, 918 F.2d 1178, 1183 (5th Cir.1990)). Even if the defendants violated the plaintiffs' constitutional rights, they are entitled to immunity if their actions were objectively reasonable. Blackwell, 34 F.2d at 303.

The defendants argue in their objections that the plaintiff has no "clearly established right" to *outdoor* exercise. This court agrees. Nevertheless, the plaintiff possesses a clearly established right to an adequate opportunity to exercise, and as illustrated by this court's previous discussion on the matter has possessed this right throughout the time period complained of in this action.

While the Magistrate Judge may have repeatedly referred to "outdoor recreation" in her Report and Recommendation, such references are only indicative of the defendants' failure to provide evidence before the Magistrate Judge of adequate indoor exercise opportunities. Based upon the present evidence before the court, Unit 32-B's outdoor "pens" constitute the only available *adequate* opportunity for exercise for the plaintiff.

Now that the court has determined that the plaintiff has indeed asserted the violation of a clearly established right, the court turns to whether reasonable officials would have known that taking the complained of actions would have violated that clearly established right. In light of the particular facts of this case, the court finds that no reasonable official, with the knowledge possessed by these defendants at the time, would have believed that failing to provide Mr. Maze with any additional opportunity for exercise did not violate his Eighth Amendment rights. Therefore, none of these defendants are entitled to the protection of qualified immunity.

III. Damages

) Monetary Damages

In that the court has found that the defendants Hargett, Cook, Jones and Armstrong are in fact liable to the plaintiff on his claim arising under the Eighth Amendment, the court must determine the appropriate amount of damages to be awarded. The Magistrate Judge, in her Report and Recommendation, opined that this court should award the plaintiff compensatory damages in the total amount of $750.00. The court, in considering the appropriate amount of damages, however, does deem

quite relevant the plaintiff's failure to demonstrate any present physical deterioration as a consequence of absent exercise opportunities. The plaintiff merely testified unspecifically about physical deterioration, and the only specific reference to physical problems suffered is that his feet swell when he is not allowed outside recreation. In light of the lack of substantial evidence regarding present injury, the court cannot in good conscience award the plaintiff compensatory damages. Nevertheless, nominal damages are recoverable against the defendants Hargett, Cook, Jones and Armstrong from the mere fact that they violated the plaintiff's constitutional rights. See, e.g., Carey v. Piphus, 435 U.S. 247, 266-67, 98 S.Ct. 1042, 1053-54, 55 L.Ed.2d 252 (1978); Clarke v. Stalder,121 F.3d 222, 225 n.4 (5th Cir. 1997); Taylor v. Green, 868 F.2d 162, 164 (5th Cir. 1989). Therefore, the court shall enter judgment on behalf of the plaintiff against the defendants Hargett, Cook, Jones and Armstrong in the amount of one dollar ($1.00).

B) Injunctive Relief

Additionally, the Magistrate Judge recommended in her Report and Recommendation that the plaintiff defendants Hargett, Cook, Jones and Armstrong should be enjoined to provide adequate exercise opportunities to the plaintiff. This court agrees with the Magistrate Judge. From the proof before this court in this matter, the only adequate opportunity reasonably available to the plaintiff is the outside "pens" at his prison unit. This court shall order that he be given intermittent access to these pens for his hour long recreational periods.

IV. Conclusion

Upon review of the record in this cause, the undersigned is of the opinion that the Magistrate Judge correctly determined that the defendants Hargett, Cook, Jones and Armstrong have violated the Eighth Amendment right of the plaintiff to be free from cruel and unusual punishment. More particularly, these defendants have denied the plaintiff adequate exercise opportunities. Nevertheless, the court finds that Mr. Maze has not yet suffered sufficient injuries to warrant an award of compensatory damages. The court shall award Mr. Maze an award of nominal damages and enjoin these defendants to afford him adequate exercise opportunities in the future. As to the plaintiff's remaining

claims against these defendants, as well as all of the plaintiff's claims against the defendant J. Stewart Murphy, Mr. Maze is not entitled to recover and the court shall enter judgment for the defendants on these claims.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of April 1998.

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United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

JAMES MAZE — PLAINTIFF

vs. — Civil Action No. 4:94cv211-D-A

EDWARD HARGETT, et al. — DEFENDANTS

FINAL JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

) the Report and Recommendation of United States Magistrate Judge S. Allan Alexander in this cause, dated February 29, 1996, is hereby ADOPTED and APPROVED as the opinion of this court except to the extent that is contrary to today's opinion of the court;

) the objections of the defendants to the Report and Recommendation of the Magistrate Judge are hereby OVERRULED;

) the objections of the plaintiff to the Report and Recommendation of the Magistrate Judge are hereby OVERRULED;

) judgment is hereby entered in favor of the defendant Stewart Murphy as against all of the plaintiff's claims; all of the plaintiff's claims against defendant Murphy are hereby DISMISSED; defendant Murphy is hereby DISMISSED from this action;

) judgment is hereby entered in favor of the plaintiff on his claims that defendants Hargett, Cook, Jones and Armstrong violated his Eighth Amendment right to be free from cruel and unusual punishment. Judgment is entered as to these defendants in their individual capacities for monetary damages only, and is entered as against the defendants in their official capacity for injunctive relief only;

) in light of this court's entry of judgment against the defendants Hargett, Cook, Jones and Armstrong in their individual capacities, the court finds that these defendants are liable to the plaintiff, jointly and severally, for an award of nominal damages in the

amount of one dollar ($1.00);

) in light of this court's entry of judgment against the defendants Hargett, Cook, Jones and Armstrong in their official capacities for injunctive relief, these defendants and their successors in office are hereby ENJOINED to provide the plaintiff with at least one (1) hour per day outside of his cell, a minimum of five (5) days per week, and to afford him an adequate opportunity to exercise. The defendants shall ensure that at least forty percent (40%) of this time, the equivalent of two days per week, shall be provided outdoors if weather permits. This court, however, retains jurisdiction to modify this order in the event the defendants can certify to this court that the plaintiff can and will be provided with adequate indoor opportunities for exercise;

) as to the remainder of the plaintiff's claims, judgment is hereby entered on behalf of all of the defendants; and

) this case is CLOSED.

SO ORDERED, this the ____ day of April 1998.

United States District Judge